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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 24, 2001

APPLICATION OF

CASE NO. SEC010044

MILLENNIUM ADVISORY SERVICES, INC.

For an official interpretation
pursuant to the Virginia Securities
Act § 13.1-525

OFFICIAL INTERPRETATION

THIS MATTER came before the Commission for consideration upon the letter-application of Millennium Advisory Services, Inc. ("Applicant") dated March 2, 2001, filed under § 13.1-525 of the Virginia Securities Act, § 13.1-501 et seq. of the Code of Virginia ("Act"), by its counsel and upon payment of the requisite fee. Applicant has requested a determination as to whether or not certain persons participating in a referral-fee arrangement involving investment advisory services must register pursuant to § 13.1-504 A(ii) of the Act, as investment advisors or investment advisor representatives. The pertinent information contained in the application is summarized as follows:

Applicant, a registered investment advisor and a Virginia corporation incorporated on February 1, 2001, provides advice on equity securities, debt securities, government securities, certificates of deposit, investment company securities, options

and warrants, among others, and investment supervisory and financial planning services and charges for its advisory services based on either a percentage of assets under management, hourly rates, or fixed fees, in Virginia. Applicant plans to enter into a written referral-fee arrangement with Bullock, Wiggins & DeWitt, P.C. ("CPA Firm") under which the accounting clients of CPA Firm may be referred to Applicant for investment advisory services.

The CPA Firm will refer customers to Applicant, and in return Applicant will compensate the CPA Firm by paying to the CPA Firm a portion of the investment management services fees collected from referred clients for providing these referral services.

The Applicant represented that the CPA Firm would refer only those clients who expressed an interest in investment advisory services and would not actively solicit their clients. Those clients who expressed an interest would be provided Applicant's name and such other information sufficient to enable the client to contact Applicant. CPA Firm also would assist such clients in setting up initial meetings with Applicant personnel or by making such introductions of the parties as would be helpful, without participating in, or being present at, any meetings except initial meetings to facilitate introductions. Further, CPA Firm would not hold itself out as

providing investment advisory services or advise clients on investments or securities. CPA Firm would provide brochures and information summarizing Applicant's services and provide clerical and ministerial services as necessary. CPA Firm would also forward financial or other information of the client to Applicant in the normal course of business.

Further, the Applicant would pay a portion of any advisory fees collected from referred clients to CPA Firm for providing these referral services, such fees would be paid to a third entity, one-half owned by CPA Firm and one-half owned by certain principals of the Applicant and others not related to either.

Applicant argues that CPA Firm and its accountants should not be required to register under the Act as an investment advisor or as investment advisor representatives as participation in Applicant's referral program is solely incidental to CPA Firm's practice of accountancy. Further, Applicant argues that the definition of investment advisor pursuant to § 13.1-501 A of the Act does not intend the definition of investment advisor or investment advisor representative to include CPA Firm and its accountants because participation in the referral program is restricted to clerical and ministerial duties.

Based upon the representations made by the Applicant, the Commission will not require CPA Firm and its accountants to

maintain registration as an investment advisor and investment advisor representatives if CPA Firm meets the following requirements:

1. CPA Firm will have a written agreement between itself and Applicant. The agreement will describe the referral activities to be engaged in by CPA Firm on behalf of the Applicant and the compensation to be received. The agreement shall contain an undertaking by CPA Firm to perform the duties under the agreement in a manner consistent with the instructions of the Applicant and provisions of the Act.

2. CPA Firm will provide clients with a current copy of the Applicant's investment advisor's written disclosure statement required by the Act and the rules promulgated thereunder.

3. CPA Firm will provide clients with a separate written statement describing the financial arrangement between it and Applicant.

4. CPA Firm will have referred clients sign and date an acknowledgement of receipt of the investment advisor's and CPA Firm's written statements, such acknowledgements shall be maintained by Applicant for inspection by the Division no more than annually and retained for a period not to exceed three years.

THE COMMISSION, upon consideration of and in reliance upon the information supplied by Applicant, is of the opinion and finds that the foregoing proposed activities and services, whose activities are performed as described above and subject to the limitations listed above, are not within the intent of the Act's definition of investment advisor and investment advisor representative as defined by § 13.1-501 of the Act. The Commission's opinion is based solely upon the information provided by Applicant and any deviation therefrom will be subject to further Commission determination. It is, therefore,

ORDERED that the CPA Firm and CPA Firm's accountants, whose activities are performed as described above, and subject to the limitations listed above, are not required to register as an investment advisor and investment advisor representatives pursuant to § 13.1-504 A(ii) of the Act.